



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2012-0840, FRL-9778-5]

Approval and Promulgation of Implementation Plans;

New Jersey and New York Ozone Attainment Demonstrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the ozone attainment demonstration portion of comprehensive State Implementation Plan revisions submitted by New Jersey and New York to meet Clean Air Act requirements for attaining the 1997 8-hour ozone national ambient air quality standard. EPA is approving New Jersey's and New York's demonstrations of attainment of the 1997 8-hour ozone standard as they relate to their portions of three moderate nonattainment areas; the New York-Northern New Jersey-Long Island, NY-NJ-CT area, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE area, and the Poughkeepsie, NY area.

DATES: This final rule is effective on [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2012-0840. All documents in the docket are listed in the <http://www.regulations.gov> web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [http:// www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Programs Branch, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007-1866.

FOR FURTHER INFORMATION CONTACT:

Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866. The telephone number is (212) 637- 4249. Mr. Kelly can also be reached via electronic mail at *kelly.bob@epa.gov*.

SUPPLEMENTARY INFORMATION:

Throughout this document, wherever “Agency,” “we,” “us,” or “our” is used, we mean the EPA.

What Action is EPA Taking?

The Environmental Protection Agency (EPA) is approving the ozone attainment demonstration portion of comprehensive State Implementation Plan (SIP) revisions submitted by New Jersey and New York to meet Clean Air Act (Act or CAA) requirements for attaining the 0.08 parts per million (ppm) 8-hour ozone national ambient air quality standards (NAAQS or standard). Unless

otherwise specifically noted in the action, references to the 8-hour ozone standard are to the 0.08 ppm ozone standard promulgated in 1997. EPA is approving New Jersey's and New York's SIP revisions which demonstrate attainment of the 1997 8-hour ozone standard as they relate to their portions of three moderate nonattainment areas:

- the New York-Northern New Jersey-Long Island, NY-NJ-CT area, also called the New York City Metropolitan area
- the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE area, also called the Philadelphia area, and
- the Poughkeepsie, NY area.

The EPA is approving New Jersey's and New York's 8-hour ozone attainment demonstration SIP revisions mainly because the EPA has evaluated the ambient air quality monitoring data and EPA has determined that the New York City Metropolitan, Philadelphia, and Poughkeepsie moderate nonattainment areas have attained the ozone NAAQS by their respective attainment deadlines. This determination is based on complete quality assured and certified ambient air monitoring data from 2007 to 2011 that show the areas have monitored attainment of the 1997 8-hour ozone NAAQS during this monitoring period. See 77 FR 36163, 77 FR 47533, 77 FR 17341, and 74 FR 63993.

EPA is aware that preliminary ambient air quality monitoring data for 2012 may indicate that the New York City Metropolitan and Philadelphia areas are no longer attaining the 1997 8-hour ozone NAAQS, while the Poughkeepsie area continues to attain the 8-hour ozone NAAQS. However, 2012 monitoring data is not relevant to this rulemaking on SIP revisions which demonstrate how the states met their plan to attain the 1997 8-hour ozone standard by the June

15, 2010 attainment date (June 15, 2011 for the Philadelphia area). Based on data through 2011, these areas are attaining the 1997 8-hour ozone NAAQS. EPA has a continuing obligation to review the air quality data each year to determine whether areas are meeting the NAAQS and will continue to conduct that review in the future after data is complete, quality assured, certified and submitted to EPA.

In summary, the basic photochemical grid modeling used by New Jersey and New York in its SIP submittal meets EPA's guidelines and, when used with the methods recommended in EPA's modeling guidance, is acceptable to EPA. Air quality data through 2011 supports the states' conclusions that the areas will demonstrate attainment of the 8-hour ozone standard by the attainment date. The purpose of the attainment demonstration is to show how the areas will meet the standard by the attainment date. All the control measures included in the attainment demonstration SIPs have already been adopted and implemented by the States and submitted to and approved by the EPA. Based on (1) the states following EPA's modeling guidance, (2) the quality assured and certified air quality data through 2011, (3) the areas attaining the standard by the attainment date, and (4) the implemented SIP approved control measures, EPA is approving the New Jersey and New York attainment demonstration SIP revisions for the New York City Metropolitan, Philadelphia and Poughkeepsie 1997 8-hour ozone moderate nonattainment areas.

On December 11, 2012 (77 FR 73570), EPA published a notice of proposed rulemaking for the New Jersey and New York attainment demonstration SIP revisions. No public comments were received on the December 11, 2012 proposal. The reader is referred to the December 11, 2012 proposal for additional information regarding this action.

Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: January 28, 2013.

Judith A. Enck,

Regional Administrator,

Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart FF—New Jersey

2. Section 52.1582 is amended by adding new paragraph (o) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone.

* * * * *

(o)(1) The 1997 8-hour ozone attainment demonstration for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area included in New Jersey's October 29, 2007 State Implementation Plan revision is approved and satisfies the requirements of section 182(c)(2)(A) of the Clean Air Act.

(2) The 1997 8-hour ozone attainment demonstration for the New Jersey portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area included in New Jersey's October 29, 2007 State Implementation Plan revision is approved and satisfies the requirements of section 182(c)(2)(A) of the Clean Air Act.

Subpart HH—New York

3. Section 52.1670(e) is amended by adding new entries to the bottom of table (e) to read as follows:

§ 52.1670 Identification of plan.

(e) * * *

EPA-Approved New York Nonregulatory And Quasi-Regulatory Provisions

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
* * * * *				
1997 8-hour Ozone – Attainment Demonstration	New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area	2/8/2008	[Insert date of publication in the Federal Register] [Insert page number where the document begins]	
1997 8-hour Ozone – Attainment Demonstration	Poughkeepsie 8-hour ozone moderate nonattainment area	2/8/2008	[Insert date of publication in the Federal Register] [Insert page number where the document begins]	

4. Section 52.1683 is amended by adding new paragraph (m) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(m)(1) The 1997 8-hour ozone attainment demonstration for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area included in New York's

February 8, 2008 State Implementation Plan revision is approved and satisfies the requirements of section 182(c)(2)(A) of the Clean Air Act.

(2) The 1997 8-hour ozone attainment demonstration for the Poughkeepsie nonattainment area included in New York's February 8, 2008 State Implementation Plan revision is approved and satisfies the requirements of section 182(c)(2)(A) of the Clean Air Act.

[FR Doc. 2013-02927 Filed 02/08/2013 at 8:45 am; Publication Date: 02/11/2013]